Calendar No. 342

105TH CONGRESS, *2d Session* | SENATE | REPORT 105–197

THE BORDER IMPROVEMENT AND IMMIGRATION ACT OF 1998

JUNE 1, 1998.—Ordered to be printed

Mr. HATCH, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1360]

The Committee on the Judiciary, to which was referred the bill (S. 1360) to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to clarify and improve the requirements for the development of an automated entry-exit control system and to enhance and improve land border control and enforcement, having considered the same, reports favorably thereon, with an amendment in the nature of a substitute, and recommends that the bill, as amended, do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Border Improvement and Immigration Act of 1998".

SEC. 2. AMENDMENT OF THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996.

(a) IN GENERAL.—Section 110(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1221 note) is amended to read as follows:

"(a) SYSTEM.—

"(1) IN GENERAL.—Subject to paragraph (2), not later than 2 years after the date of enactment of this Act, the Attorney General shall develop an automated entry and exit control system that will—

"(A) collect a record of departure for every alien departing the United States and match the record of departure with the record of the alien's arrival in the United States; and

"(B) enable the Attorney General to identify, through on-line searching procedures, lawfully admitted nonimmigrants who remain in the United States beyond the period authorized by the Attorney General.

"(2) EXCEPTION.—The system under paragraph (1) shall not collect a record of arrival or departure—

"(A) at a land border or seaport of the United States for any alien; or

"(B) for any alien for whom the documentary requirements in section 212(a)(7)(B) of the Immigration and Nationality Act have been waived by the Attorney General and the Secretary of State under section 212(d)(4)(B) of the Immigration and Nationality Act.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 110 Stat. 3009–546).

SEC. 3. REPORT ON AUTOMATED ENTRY-EXIT CONTROL SYSTEM.

(a) REQUIREMENT.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit a report to the Committees on the Judiciary of the Senate and the House of Representatives on the feasibility of developing and implementing an automated entry-exit control system that would collect a record of departure for every alien departing the United States and match the record of departure with the record of the alien's arrival in the United States, including departures and arrivals at the land borders and seaports of the United States.

(b) CONTENTS OF REPORT.—Such report shall—

(1) assess the costs and feasibility of various means of operating such an automated entry-exit control system, including exploring—

(A) how, if the automated entry-exit control system were limited to certain aliens arriving at airports, departure records of those aliens could be collected when they depart through a land border or seaport; and

(B) the feasibility of the Attorney General, in consultation with the Secretary of State, negotiating reciprocal agreements with the governments of contiguous countries to collect such information on behalf of the United States and share it in an acceptable automated format;

(2) consider the various means of developing such a system, including the use of pilot projects if appropriate, and assess which means would be most appropriate in which geographical regions;

(3) evaluate how such a system could be implemented without increasing border traffic congestion and border crossing delays and, if any such system would increase border crossing delays, evaluate to what extent such congestion or delays would increase; and

(4) estimate the length of time that would be required for any such system to be developed and implemented.

SEC. 4. ANNUAL REPORTS ON ENTRY-EXIT CONTROL AND USE OF ENTRY-EXIT CONTROL DATA.

(a) ANNUAL REPORTS ON IMPLEMENTATION OF ENTRY-EXIT CONTROL AT AIRPORTS.—Not later than 30 days after the end of each fiscal year until the fiscal year in which Attorney General certifies to Congress that the entry-exit control system required by section 110(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended by section 2 of this Act, has been developed, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report that—

(1) provides an accurate assessment of the status of the development of the entry-exit control system;

(2) includes a specific schedule for the development of the entry-exit control system that the Attorney General anticipates will be met; and

(3) includes a detailed estimate of the funding, if any, needed for the development of the entry-exit control system.

(b) ANNUAL REPORTS ON VISA OVERSTAYS IDENTIFIED THROUGH THE ENTRY-EXIT CONTROL SYSTEM.—Not later than June 30 of each year, the Attorney General shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report that sets forth—

(1) the number of arrival records of aliens and the number of departure records of aliens that were collected during the preceding fiscal year under the entry-exit control system under section 110(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as so amended, with a separate accounting of such numbers by country of nationality;

(2) the number of departure records of aliens that were successfully matched to records of such aliens' prior arrival in the United States, with a separate accounting of such numbers by country of nationality and by classification as immigrant or nonimmigrant; and

(3) the number of aliens who arrived as nonimmigrants, or as visitors under the visa waiver program under section 217 of the Immigration and Nationality Act, for whom no matching departure record has been obtained through the system, or through other means, as of the end of such aliens' authorized period of stay, with an accounting by country of nationality and approximate date of arrival in the United States.

(c) INCORPORATION INTO OTHER DATABASES.—Information regarding aliens who have remained in the United States beyond their authorized period of stay that is identified through the system referred to in subsection (a) shall be integrated into appropriate databases of the Immigration and Naturalization Service and the Department of State, including those used at ports-of-entry and at consular offices.

SEC. 5. LIMITATION ON CERTAIN BORDER CROSSING-RELATED VISA FEES.

(a) LIMITATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of State may not charge a fee in excess of the following amounts for the processing of any application for the issuance of a visa under section 101(a)(15)(B) of the Immigration and Nationality Act if the appropriate consular officer has reason to believe that the visa will be used only for travel in the United States within 25 miles of the international border between the United States and Mexico and for a period of less than 72 hours:

(i) In the case of any alien 18 years of age or older, $45.

(ii) In the case of any alien under 18 years of age, zero.

(2) PERIOD OF VALIDITY OF VISAS FOR CERTAIN MINOR CHILDREN.—If a consular officer has reason to believe that a visa issued under section 101(a)(15)(B) of the Immigration and Nationality Act to a child under 18 years of age will be used only for travel in the United States within 25 miles of the international border between the United States and Mexico for a period of less than 72 hours, then the visa shall be issued to expire on the date on which the child attains the age of 18.

(b) DELAY IN BORDER CROSSING RESTRICTIONS.—Section 104(b)(2) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 is amended by striking "3 years" and inserting "4 years".

(c) PROCESSING IN MEXICAN BORDER CITIES.—The Secretary of State shall continue until at least October 1, 2000, to process applications for visas under section 101(a)(15)(B) of the Immigration and Nationality Act at the following cities in Mexico located near the international border with the United States: Nogales, Nuevo Laredo, Ciudad Acuna, Piedras Negras, Agua Prieta, and Reynosa.

SEC. 6. AUTHORIZATIONS OF APPROPRIATIONS FOR BORDER CONTROL AND ENFORCEMENT ACTIVITIES OF THE IMMIGRATION AND NATURALIZATION SERVICE.

(a) IN GENERAL.—

(1) INS.—In order to enhance enforcement and inspection resources on the land borders of the United States, enhance investigative resources for anticorruption efforts and efforts against drug smuggling and money-laundering organizations, process cargo, reduce commercial and passenger traffic waiting times, and open all primary lanes during peak hours at major land border ports of entry on the Southwest and Northern land borders of the United States, in addition to any other amounts appropriated, there are authorized to be appropriated for salaries, expenses, and equipment for the Immigration and Naturalization Service for purposes of carrying out this section—

(A) $113,604,000 for fiscal year 1999;

(B) $121,064,000 for fiscal year 2000; and

(C) such sums as may be necessary in each fiscal year thereafter.

(b) FISCAL YEAR 1999.—

(1) INS.—Of the amounts authorized to be appropriated under subsection (a)(2)(A) for fiscal year 1999 for the Immigration and Naturalization Service, $15,090,000 shall be available until expended for acquisition and other expenses associated with implementation and full deployment of narcotics enforcement and cargo processing technology along the land borders of the United States, including—

(A) $11,000,000 for 5 mobile truck x-rays with transmission and backscatter imaging to be distributed to border patrol checkpoints;

(B) $200,000 for 10 ultrasonic container inspection units to be distributed to border patrol checkpoints;

(C) $240,000 for 10 Portable Treasury Enforcement Communications System (TECS) terminals to be distributed to border patrol checkpoints;

(D) $1,000,000 for 20 remote watch surveillance camera systems to be distributed to border patrol checkpoints;

(E) $180,000 for 36 AM radio "Welcome to the United States" stations located at permanent border patrol checkpoints;

(F) $875,000 for 36 spotter camera systems located at permanent border patrol checkpoints; and

(G) $1,600,000 for 40 narcotics vapor and particle detectors to be distributed to border patrol checkpoints.

(c) FISCAL YEAR 2000 AND THEREAFTER.—

(1) INS.—Of the amounts authorized to be appropriated under this section for the Immigration and Naturalization Service for fiscal year 2000 and each fiscal year thereafter, $1,509,000 shall be for the maintenance and support of the equipment and training of personnel to maintain and support the equipment described in subsection (b)(1), based on an estimate of 10 percent of the cost of such equipment.

(d) NEW TECHNOLOGIES; USE OF FUNDS.—

(1) IN GENERAL.—The Attorney General may use the amounts authorized to be appropriated for equipment under this section for equipment other than the equipment specified in this section if such other equipment—

(A)(i) is technologically superior to the equipment specified; and

(ii) will achieve at least the same results at a cost that is the same or less than the equipment specified; or

(B) can be obtained at a lower cost than the equipment authorized.

(2) TRANSFER OF FUNDS.—Notwithstanding any other provision of this section, the Attorney General may reallocate an amount not to exceed 10 percent of the amount specified for equipment specified in this section.

(e) PEAK HOURS AND INVESTIGATIVE RESOURCE ENHANCEMENT.—

(1) INS.—Of the amounts authorized to be appropriated under this section for fiscal years 1999 and 2000, $98,514,000 in fiscal year 1999 and $119,555,000 for fiscal year 2000 shall be for—

(A) a net increase of 535 inspectors for the Southwest land border and 375 inspectors for the Northern land border, in order to open all primary lanes on the Southwest and Northern borders during peak hours and enhance investigative resources;

(B) a net increase of 100 inspectors and canine enforcement officers for border patrol checkpoints;

(C) 100 canine enforcement vehicles to be used by the Border Patrol for inspection and enforcement, and to reduce waiting times, at the land borders of the United States;

(D) a net increase of 40 intelligence analysts and additional resources to be distributed among border patrol sectors that have jurisdiction over major metropolitan drug or narcotics distribution and transportation centers for intensification of efforts against drug smuggling and money-laundering organizations;

(E) a net increase of 68 positions and additional resources to the Office of the Inspector General of the Department of Justice to enhance investigative resources for anticorruption efforts; and

(F) the costs incurred as a result of the increase in personnel hired pursuant to this section.

SEC. 7. SENSE OF THE SENATE CONCERNING AUTHORIZATION OF APPROPRIATIONS FOR BORDER CONTROL AND ENFORCEMENT ACTIVITIES OF THE UNITED STATES CUSTOMS SERVICE.

Given that the Customs Service is cross-designated to enforce immigration laws and given the important border control role played by the Customs Service, it is the

sense of the Senate that authorization for appropriations should be granted to the Customs Service similar to those granted to the Immigration and Naturalization Service under section 6.

I. PURPOSE

S. 1360 addresses a number of border-related immigration issues. The bill is designed to improve the flow of trade, traffic, commerce, and tourism across U.S. borders, and to ensure adequate staffing and resources for the detection and deterrence of illegal activity at those borders.

First, S. 1360 addresses the potentially grave consequences that could result, particularly at the land borders, if section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, is not modified. The requirement in section 110 that the INS establish an automated entry-exit control system to track the arrival and departure of "every alien" entering and leaving the United States would be amended so that it only applies at airports, where automated entry-exit control currently is feasible. The requirement as to land borders and seaports came about only as a result of language that appeared for the first time in the Conference Report to IIRIRA, and more information is needed before Congress can make a well-informed judgment as to where and when any other, more expansive automated entry-exit control requirements should be put into place. S. 1360 accordingly requires the Attorney General to issue within 2 years a detailed feasibility report to Congress concerning the development and implementation of an entry-exit control system covering all ports of entry including land borders and seaports. Separately required are reports on data collected through the entry-exit control system.

Second, the legislation includes several provisions added in Committee to address some practical problems currently arising at the Southern land border with the implementation of the new biometric border crossing cards, also called "laser visas", that were mandated by section 104 of IIRIRA.

Finally, S. 1360 authorizes additional inspectors, new technology, and other resources for the purpose of facilitating and improving border inspections and border control activities of the Immigration and Naturalization Service.

II. LEGISLATIVE HISTORY

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, was one of the largest and most comprehensive pieces of legislation enacted by the 104th Congress. IIRIRA contains almost 200 sections covering a vast range of immigration topics.[1] In Committee, it took six days of mark up for the Committee to complete consideration of the legislation. Even more time was consumed on the floor, and then also in conference, before IIRIRA became law in its final form.

[1] To cite just a few, IIRIRA included enhanced penalties for document fraud and alien smuggling, increased authority for immigration inspectors, increased penalties for visa overstayers, procedures to streamline the deportation process for criminal aliens, welfare reform provisions, and many others. Given the complexity of the legislation and some unintended consequences that resulted from some parts of it, it is not surprising that several provisions of IIRIRA have already been modified by the 105th Congress.

Section 110 is one small piece of that legislation. It provides that, by September 30, 1998, the Attorney General must develop an automated entry-exit control system that will enable the Attorney General to track the arrival and departure of "every alien" entering and leaving the United States. Because the final version of section 110 uses the term "every alien", it requires the Attorney General to develop a system that would apply at every port of entry into the United States. The section thus requires the establishment of an automated entry-exit control system that would operate not only at airports, where a paper-based entry-exit control system has been in effect but has repeatedly failed to produce usable data, but also at land borders and seaports, where its operation is entirely infeasible at this point and could effectively close the borders.

Significantly, the term "every alien" was added only in conference, and its implications were not fully understood or debated. Neither of the precursors to section 110 that appeared in the House and Senate bills would have required the establishment of entry-exit control systems at the land borders or seaports. The House bill contained a provision that would only have established pilot projects to collect entry and departure records at at least three of the five airports with the heaviest volume of traffic from foreign territories. See section 113, H.R. 2202, as passed by the House. The Senate bill contained a general provision that would have required the Attorney General to develop an automated entry-exit control system, but that would not have required the system to cover land borders or seaports. See section 174, H.R. 2202, as amended and passed by the Senate.

Shortly after IIRIRA's enactment, the potential implications of section 110's use of the term "every alien" became clearer and began to raise serious concerns among potentially affected parties. On December 16, 1996, the Canadian Ambassador wrote to the then chairs of the Senate and House Immigration Subcommittees, Senator Alan Simpson and Congressman Lamar Smith, seeking "confirm[ation] that Congress did not intend to make Canadians subject to [section 110]." The Ambassador particularly noted that "such [an] interpretation would have a very negative impact on cross border mobility at high volume border crossings such as the Rainbow bridge in Niagara Falls or the Detroit-Windsor Tunnel" and that longstanding policies have not required any special documentation for Canadians entering the United States. The Ambassador wrote that "[staff had] indicated that Congress did not intend to require the issuance of documentation and the control of departure for the millions of Canadians who have, since well before 1986, traditionally enjoyed the privilege of a summary inspection" and requested the chairmen to confirm this understanding. The then-chairmen responded by a brief letter dated December 18, 1996, which stated that staff "were accurate in their description of our intent" and stated that the chairmen did not intend to impose new documentary requirements on Canadians.

The Immigration and Naturalization Service and the Department of State also became concerned, following passage of IIRIRA, about the feasibility and implications of the final language of section 110. However, the Department of Justice determined that, regardless of congressional intent, the Attorney General would be required by

the statutory text to apply section 110 at all ports of entry, including land borders and seaports. Given concerns about the feasibility of implementing section 110 as written, the substantial disruption attempting to do so would cause, and the sensitive diplomatic issues involved, the Departments of Justice and State concurred in officially requesting that Congress amend section 110. In proposed technical corrections to IIRIRA submitted to Congress in July, 1997, they specifically recommended that section 110 be limited to require automated entry-exit control only at airports and that there instead be a 2-year feasibility report on establishing equivalent entry-exit control at land borders and seaports.

Concerned businesses, individuals and State and local governments also began to voice their concerns about the implementation of section 110. In order to consider these issues and proposed changes to the law, two hearings were held in the Judiciary Committee, both in the Subcommittee on Immigration, to examine section 110's possible negative consequences.

On October 14, 1997, the chairman of the Subcommittee on Immigration, Senator Spencer Abraham, convened a field hearing in Detroit, MI, at which testimony was heard concerning the traffic congestion and delays that would result from the implementation of section 110 as written. Testimony at the hearing was presented by Congressman John Conyers; Dennis Archer, mayor of Detroit, MI; L. Brooks Patterson, county executive for Oakland County, MI; Steve Miller, mayor of Port Huron, MI; Bill Fike, executive vice president and vice chairman of Magna International; Dan Stamper, president of the Detroit International Bridge Co.; Richard Czuba, director of the Michigan Department of Tourism; Bob Farrell, president of the National Automobile Transporters Association; and Steve Facione, group vice president of Olympia Entertainment.

Witnesses testifying at the hearing universally voiced concerns that implementing section 110 at the land borders could cause severe traffic delays that would effectively close the land borders. Testimony highlighted that Michigan would particularly be affected because of the relatively large number of high-volume border crossings located in the State. Mayor Archer explained that, of all crossings on the Northern border handling U.S.-bound vehicle traffic from Canada, Detroit's Ambassador Bridge is the busiest U.S.-Canadian crossing, the Detroit-Windsor Tunnel is the second busiest, and Port Huron's Blue Water Bridge is the fifth. Implementation of section 110 at the land borders would, he explained, turn "downtown Detroit [into] a virtual parking lot." Dan Stamper, president of the Detroit International Bridge Co., testified that the Ambassador Bridge handles approximately 30,000 vehicle crossings per day. Mr. Stamper calculated that "assum[ing] the most efficient and remarkable entry and exit procedures in the world [that] will take only 30 seconds" per vehicle, and making the equally optimistic assumption that only half of the vehicles have to go through the procedures, that would amount to an extra "3,750 minutes of additional processing time each day." As he pointed out, "there are only 1,440 minutes in a day." Mr. Stamper concluded that, if section 110 is put into place at the land borders, "we are talking about closing the border." Witnesses also commented on current delays at the land border, which are already problematic at peak times.

Trade, commerce, tourism, and the general economic health of border communities would likewise be seriously harmed by section 110's implementation. Michigan would also be particularly hard-hit by secondary economic effects of section 110. Among U.S. States, Michigan is Canada's largest trading partner, with $57 billion of goods being exchanged between Michigan and Canada in 1996. Richard Czuba, the State's Director of Tourism, pointed out that among the 50 States Michigan is the fourth leading destination for Canadian tourists, behind New York, Washington, and Florida. Steve Facione, group vice president of Olympia Entertainment, which operates the Joe Louis Arena, the Fox theater, Tiger Stadium, and other entertainment facilities in the Detroit metropolitan area, expressed concern that the many Canadians who make day-trips and evening-trips to Michigan for baseball games, hockey games, and other events would be turned away by border delays and would spend their entertainment dollars in Canada rather than the United States. Port Huron Mayor Steve Miller highlighted the fact that many retailers and manufacturers in Port Huron depend on Canadian business for their survival, and that, without that business, jobs that fuel the economy and the taxes provided by Canadians that go to provide services to Michiganians would disappear. As he put it, "the long lines at the bridge will put an end to the long lines at our cash registers."

William Fike, executive vice president and Vice Chairman of Magna International, an automotive manufacturing corporation doing extensive cross-border trade in automotive components, testified that the automotive industry would be hard hit by the implementation of section 110 at the land borders. It could easily become so cumbersome and costly to export auto parts from the United States that automotive component manufacturers located in Canada could quickly gain a competitive advantage. The automotive industry would be especially vulnerable because that industry relies heavily on "just-in-time" delivery methods, under which delays as short as 20 minutes can cause costly assembly line shut-downs.

Robert Farrell, president of the National Automobile Transporters Association, testifying also on behalf of the American Trucking Association and the Michigan Trucking Association, explained that section 110 would have a severe impact on the trucking industry as well. Mr. Farrell testified that the implementation of section 110 "would dramatically result in decreased efficiencies and productivity for motor carriers[, increased] operating and shipping costs;" by estimates of the organizations he represents, "[j]ust to cross the bridge would cost over $2,500 per car hauler per crossing in operating costs."

American consumers and workers, in addition to American businesses, would also be hurt. As Mr. Fike noted, any "additional costs incurred in the manufacturing process [] can only be born by customers, employees and shareholders.'

In response to the concerns raised at the hearing and elsewhere, Senator Abraham, along with original cosponsors Senators Kennedy, D'Amato, Leahy, Grams, Dorgan, Collins, Murray, Burns, and Snowe, introduced S. 1360, the Border Improvement and Immigration Act of 1997, on November 4, 1997. As introduced, S. 1360 provided that the entry-exit control system would not apply

at the land borders of the United States, to U.S. lawful permanent residents, or to residents of foreign contiguous territories for whom the Attorney General and Secretary of State have already waived documentary requirements for entry into the United States under existing statutory authority. The bill then required the Attorney General to report to Congress within 2 years on the feasibility of implementing an entry-exit control system that would collect departure records for every alien entering and leaving the United States, including at the land borders. Finally, to address current congestion and delays at the land borders, the bill also included authorization, for each of the next 3 fiscal years, for an additional 300 INS inspectors and an additional 150 Customs inspectors.

To provide an opportunity both for the Subcommittee to examine the legislation and for it to consider more fully the nationwide and international impacts of section 110, the chairman of the Subcommittee on Immigration, Senator Abraham, convened a second hearing on the issue on November 5, 1997. That took place in Washington, DC, and included testimony from the following Members of Congress: Senators Susan Collins, Alfonse D'Amato, Rod Grams, Patty Murray, Byron Dorgan, and Congressmen John LaFalce and Jack Quinn. Testimony was further heard from Michael Hrinyak, Deputy Assistant Commissioner for Inspections at the Immigration and Naturalization Service; Eric Kunsman, Director of the Office of Canadian Affairs at the Department of State; Hallock Northcutt, vice president of the Travel Industry Association of America; Dan Stamper, president of the Detroit International Bridge Co.; Bill Stenger, president and chief operating officer of the Jay Peak Ski Resort in Jay, VT; Gerald Schwebel, former national chairman, Border Trade Alliance; and Greg Lebedev, acting chief executive officer, American Trucking Association.

Testimony again raised the specter of unbearable traffic delays that would result from implementation of section 110 at the land borders and highlighted that there are already unreasonable and lengthy delays at many land border crossings. Some Members of Congress and others highlighted delays that would occur on the Northern border if section 110 were implemented in its current form.[2] Representatives of the Travel Industry Association of America, the American Trucking Association, and the Border Trade Alliance informed the Subcommittee that similar insupportable delays and associated economic harms would also arise if section 110 were implemented on the Southern land border.[3] Opposition to applica-

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[2] The Commissioner of the New York State Department of Transportation submitted testimony explaining that the Sear-Brown Group, a transportation planning and engineering firm, had conducted an analysis of the projected impact of an entry-exit control pilot project that the INS was then planning to conduct at the Thousand Islands Bridge in Northern New York State as a first step toward implementation of section 110 at the land borders. According to Sear-Brown, delays at the land border could be as much as 2½ days, and the line of waiting vehicles would be more than 7 miles long. Delays would lead to economic harms as well. Congressman Jack Quinn pointed out that approximately 2.75 million Canadians visit New York State each year for at least one night, spending over $400 million. That income to New Yorkers would be threatened if those Canadians elected to spend their time and money elsewhere due to border inconveniences and backups. Bill Stenger, president of the Jay Peak Ski Resort in Vermont, explained that his business depends heavily on Canadian day skiers, who are already easily deterred from coming to the United States whenever there are rumors of or actual delays at the border.

[3] The Southern land border experiences an even greater volume of border crossings than the Northern border. While approximately 116 million people cross the Northern border each year,

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tion of section 110 at both land borders was echoed by INS and the State Department. Testimony also highlighted the economic harms that interior States would face as well. Many interior States, for example, have Canada as their No. 1 export market.[4] Trade between interior States and Canada typically occurs by truck or train travel overland and through the Northern border.[5] Similar effects were noted for the many interior States that benefit from trade with Mexico.[6]

The State Department further expressed concern that the implementation of section 110 at the land borders would harm U.S. diplomatic relations with Canada and Mexico. Administration officials and representatives of the travel industry additionally testified concerning difficulties with implementing section 110 at seaports and the potential harms this could cause to businesses that rely upon seaport travel and its facilitation, such as the tourism and cruise line industries. Finally, concerns were raised that serious environmental damage would result from pollution that would be generated by long lines of idling trucks and cars on both sides of the land borders, and that highway safety would be compromised by both commercial and noncommercial drivers becoming overtired during lengthy waits after which they could continue on potentially long drives.

In response to concerns raised at the hearing and otherwise brought to the Committee's attention, Senators Abraham and Kennedy developed a substitute amendment to S. 1360. Changes in the substitute amendment provided that automated entry-exit control would not be required at seaports, in addition to not being required at land borders, but that automated entry-exit control at airports would have to cover U.S. lawful permanent residents. The substitute also included provisions to address practical problems occurring at the Southwest border with the issuance of the new biometric border crossing cards (also called "laser visas") mandated by Section 104 of IIRIRA. The substitute included additional INS inspections personnel and other resources for border control and enforcement.

On April 23, 1998, S. 1360 was taken up by the Committee, and the substitute amendment was considered.[7] The bill was ordered favorably reported by the Committee, with an amendment in the nature of a substitute, by voice vote, with four Senators noted as voting in the negative.

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roughly 254 million people, 75 million cars, and 3.5 million trucks cross the Southern border at land border ports of entry every year. U.S.-Mexico trade exceeded $130 billion in 1996, with the vast majority of that trade crossing the land border.

[4] The Eastern Border Transportation Coalition has reported that States not on the border account for 56 percent of the total volume of U.S.-Canada trade.

[5] The Canadian Trucking Alliance submitted testimony indicating that 79.8 percent of all imports into Canada from the United States are transported by truck across the land border.

[6] States not on the Southwest border benefit significantly from trade with Mexico crossing the Southwest border. Dean International, Inc., an Austin, TX, based engineering and research firm, examined U.S.-Mexico trade from 1988 to 1994 on a State-by-State basis and concluded that all 48 contiguous States benefitted from increased exports to Mexico. In that same period, 25 States had tripled their exports to Mexico and another 14 States had doubled their exports to Mexico.

[7] As of the date of the markup, the following 26 Senators had cosponsored the legislation: Kennedy, D'Amato, Leahy, Grams, Dorgan, Collins, Murray, Burns, Snowe, Gorton, Levin, Jeffords, Graham, Murkowski, Craig, Moynihan, DeWine, Thurmond, Cochran, Inouye, Landrieu, Baucus, Wellstone, Akaka, Durbin, and Kempthorne.

III. DISCUSSION

A. OVERVIEW

1. LACK OF CONGRESSIONAL INTENT AND UNDERSTANDING CONCERNING THE FINAL LANGUAGE OF SECTION 110 OF IIRIRA

The problematic language of section 110, specifically its requirement that automated entry-exit control be applied to "every alien" entering and leaving the United States, was inserted only in conference with no apparent understanding, discussion, or debate concerning its potential consequences, particularly at the land borders. Neither of the precursor sections contained in the House and Senate immigration bills considered in the 104th Congress would have required automated entry-exit control at land borders or seaports. The application of section 110 at all ports of entry accordingly cannot be accurately stated to have been an integral part of IIRIRA, of efforts taken in the 104th Congress to address the serious problem of visa overstayers remaining in the United States illegally, or of proposals then under consideration to improve the entry-exit control procedures carried out at airports. In the Committee's view, the broad-based and comprehensive coverage of automated entry-exit control mandated by section 110 of IIRIRA was simply not fully understood or considered in the 104th Congress. It should be corrected.[8]

2. ELIMINATING REQUIREMENTS TO IMPLEMENT SECTION 110 AT OTHER THAN AIR PORTS OF ENTRY AND REQUIRING A STUDY AND REPORT ON COMPREHENSIVE AUTOMATED ENTRY-EXIT CONTROL IS THE MOST APPROPRIATE LEGISLATIVE RESPONSE

The Committee believes that, under the circumstances of section 110's passage and given the outpouring of concern over its implementation,[9] the most responsible legislative course of action is to modify the requirements of section 110 to most closely conform with legislative intent and feasibility. For that reason, S. 1360's modification of section 110's automated entry-exit control requirements to limit its application to airports, but to require a feasibility

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[8] As Chairman Hatch candidly acknowledged at the markup of S. 1360:

> I was there at the conference, and while it is no fun to admit one was wrong, I think that we have all come to realize that section 110 of the 1996 Act [was] inserted in conference with little or no record, [and] no consideration or debate. It was well intended, there is no question, but I think poorly constructed. [T]his bill attempts to take a step back, and reasonably and realistically calls for careful study before implementation.

[9] A wide range of groups and organizations have expressed support for S. 1360 and raised serious concerns about the implementation of section 110 at land borders and seaports, including the National Governors' Association, the Republican Governors' Association, the Chamber of Commerce of the United States, the Senate Tourism Caucus, the American Trucking Association, the County Executives of America, the American Automobile Manufacturers' Association, the American Automobile Association, the Border Trade Alliance, the New York State Department of Transportation, the Michigan Department of Transportation, the Chrysler Corp., Kraft Foods, the Detroit and Canada Tunnel Corp., the Association of American Railroads, the Canadian/American Border Trade Alliance, the Detroit Regional Chamber, the Eastern Border Transportation Coalition, the Council of State Governments-West, the Nevada Commission on Tourism, the Battle River Tourist Association, the Passenger Vessel Association, the Battle Creek Area Chamber of Commerce, the National Treasury Employees Union, and the American Immigration Lawyers Association. Letters of support for S. 1360 have been received from the following State Governors: John Engler (MI), Tony Knowles (AK), Edward Schafer (ND), Arne Carlson (MN), Phil Batt (ID), Gary Locke (WA), Jeanne Shaheen (NH), Howard Dean (VT), Marc Racicot (MT), Jane Dee Hull (AZ), and Bob Miller (NV).

study of entry-exit control at land borders and seaports, is the most attractive option to the Committee at this time. The Committee strongly believes that Congress would benefit from a detailed study of the costs, feasibility, and benefits of various means of conducting automated entry-exit control at all ports of entry, including land borders and seaports, before it considers imposing such a system. For that reason, S. 1360 requires a detailed study to be completed by the Attorney General within 2 years.

This approach not only brings section 110 more closely in line with congressional intent and understanding, but also removes the considerable pressures being felt in border States, communities, and businesses. They should not be forced to remain in the uncertain position of not knowing whether or when burdensome requirements might be tested or imposed on them. The Committee rejects any delayed implementation that is based on retaining a requirement in the law that the system must be implemented. A thorough study and complete understanding is in order before Congress requires potentially onerous and destructive requirements to go into place. That is the case particularly given the complete lack of study and debate concerning comprehensive automated entry-exit control and given the unavailability of any feasible alternatives for conducting it at the land borders at this time without effectively closing those borders.[10]

The Committee also believes that there is not the necessary support in Congress or elsewhere, nor sufficient assurances of feasibility, to require land border pilot projects at this time. Not only has no Member of Congress requested a pilot project in his or her district, but many members in fact fought hard to get the INS to cancel plans to conduct entry-exit control pilot projects on the land borders.[11]

The Committee notes that it retains its full freedom to enact an appropriate legislative scheme at a later date for automated entry-exit control at the land borders or for pilot projects, and will be in a far better position to give the issue adequate consideration after a study is completed.

The Committee reaffirms that an automated entry and exit control system must be put into place at airports no later than 2 years after the date of enactment of IIRIRA. There is no reason to delay this element of arrival and departure recordkeeping, as collection of entry and exit data can be done in conjunction with other processing travelers are subject to at airports.

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[10] As Senator Abraham, the Chairman of the Subcommittee on Immigration, stated at the markup:

> [T]he idea of putting [into the laws of the United States] something that would have to come into effect when we don't even know what it costs, how it would be done, whether it would work, [and] how effective it would be, * * * I find to be not the proper way to do the public's business.

[11] Congressman Henry Bonilla and the Chairman of the House Subcommittee on Immigration and Claims, Congressman Lamar Smith, for example, sent a joint letter to INS Commissioner Doris Meissner requesting that the INS suspend the Eagle Pass Pilot Project due to community opposition. As had been the case when the now-canceled Thousand Islands pilot project was proposed in Northern New York State, community opposition was fierce.

B. Specific Problems and Issues

1. WITHOUT A LEGISLATIVE FIX, UNBEARABLE TRAFFIC DELAYS WOULD DEVELOP AT THE LAND BORDERS

Extensive testimony at both Subcommittee hearings and other evidence received by the Committee support the view that, if section 110 were implemented in its current form, unbearable traffic delays would develop that could potentially close the land borders. An incredible volume of traffic crosses the land borders. In 1996 alone, for example, over 116 million people entered the United States by land from Canada; some 254 million individuals cross the United States-Mexico border each year. Traffic at many Northern and Southern border crossing points is already excessive. The additional delays created by implementing section 110 at the land borders would be catastrophic.

2. POTENTIALLY EXORBITANT COSTS WOULD BE INVOLVED IN IMPLEMENTING SECTION 110 AT LAND BORDERS AND SEAPORTS

Section 110 would require INS inspectors to record the entry and exit of each alien. Since there are no exit facilities at present, exit control would create a stop where none exists, and would require the construction of costly infrastructure where none exists. The Committee agrees that Congress should understand exactly what those costs are—and what benefits will be gained from incurring them—before requiring the implementation of entry-exit control at the land borders.

3. AMERICAN TRADE, BUSINESSES, AND JOBS WOULD SUFFER

As extensive testimony at the two Subcommittee hearings demonstrated, the delays and traffic caused by the implementation of section 110 at the land borders would cause significant harm to trade with neighboring nations. This is of particular concern to the Committee, given that the United States is the greatest exporting nation in the world and given that trade with Canada and Mexico is largely responsible for that preeminent position in world trade.[12] Any decrease in trade could cause serious damage to American businesses, who lose markets for their products and services, American consumers, who could have to pay more for goods and services, and American employees, whose jobs depend on trade. Economic losses also lead to decreased tax revenues for State and local governments. The potentially serious consequences here should be fully understood and carefully studied before Congress takes action that could lead to significant economic harms for U.S. businesses, States and localities, and individuals.

4. U.S. DIPLOMATIC RELATIONS WITH CANADA AND MEXICO WOULD SUFFER

As the State Department pointed out at the hearing, the United States has close and unique relationships with Canada and Mexico, which would be harmed by the implementation of section 110 in its current form due to the severe impact it would have at the land

[12] The U.S.-Canada trading relationship itself is the largest bilateral trading relationship in the world, totaling $355 billion per year in 1996.

borders and, in the case of Canada, its contravention of existing documentary requirements for Canadians entering the United States. The Mexican Ambassador to the United States, Ambassador Jesus Reyes-Heroles, and the Canadian Ambassador to the United States, Ambassador Raymond Chretien, have both written to the Committee voicing their support for S. 1360 and noting the strong bilateral interests shared by each country with the United States. Congress should take the time to ensure that our international relations have properly been taken into account and accommodated where possible before enacting legislative provisions that could cause diplomatic difficulties. That was not done before section 110 was enacted.

5. THE ENVIRONMENT AND HIGHWAY SAFETY WOULD SUFFER

As the American Trucking Association and the President of the Detroit International Bridge Company pointed out, long lines of idling vehicles would emit high and continuous levels of pollution. Long waits would also cause drivers to become overtired and highway safety would be compromised as well. These issues should likewise be studied and carefully considered before any such problems are imposed.

6. IMPLEMENTATION OF SECTION 110 AT LAND BORDERS AND SEAPORTS WOULD YIELD NO MORE THAN MINIMAL BENEFITS AT THIS TIME

Compounding the above problems is the fact that it is unclear whether anything more than minimal benefits would be gained from an attempt to implement automated entry-exit control at the land borders and seaports at this time. Any such benefits would be far outweighed by the potentially catastrophic results that would be created by section 110's implementation.

a. It is highly questionable at this point whether section 110 would ultimately provide any assistance in prosecuting individual visa overstayers

The only purported or even possible goal of an automated entry-exit control system is to track when aliens have entered and left the United States and whether they have overstayed their legally authorized period of stay. This data is extremely useful in the aggregate, for example, for estimating overstay rates for all aliens or for certain nationalities, which in turn is especially pertinent for purposes of determining whether countries are eligible to remain in the visa waiver program. Its benefits on an individual basis, however, are at this point entirely unproven and highly uncertain for a number of reasons.

There is first the issue as to whether the database would contain accurate enough information to be used in individual cases. If it were not certain that departure records were being taken consistently and entered into the system accurately, or that the system was matching records correctly, then it could not be said with sufficient certainty that the absence of a departure record in the system matched with an individual's arrival information meant that an individual had not in fact left the United States. It is certainly conceivable, and perhaps even likely, that such a system would be

fraught with errors and be unreliable for using as the basis for individual prosecutions.[13]

Such a system would also itself be subject to fraud, and this would further undermine the usefulness of the system as a basis for individual prosecutions. For instance, if the system were based on filling out information on a card upon exit, an individual remaining in the United States could have someone else exiting the United States fill out the overstayer's information on the card.[14] Or, if the system were based on swiping some sort of electronic or other card upon exit, an individual remaining in the United States could send that person's card out with another individual. Or perhaps there would be a market for counterfeit cards.

Even making the assumption, which at this point is unrealistic and untested, that a database of millions of visa overstayers could be accurately collected by the INS, it is unclear what that information would yield.[15] Even if a list of names and passport numbers of visa overstayers would be available, there would be no information as to where individuals could be located. Even if there was information at the time of entry as to where an alien was expecting to go in the United States, it cannot be expected that 6 or more months later the alien would be at the same location. Particularly if an alien were intending to overstay, it is likely that the alien would have provided only a temporary or false location as to where the alien was intending to go.

Moreover, simply providing this information to INS does not mean that the INS would have the resources to pursue these cases or that they would become the Service's first priority. The INS already fails to detain significant numbers of removable criminal aliens upon their release from State and local facilities and acknowledges that those criminal aliens will likely not appear for deportation proceedings.[16] Where the INS is already having significant difficulties removing criminal aliens, it cannot be expected that the INS would somehow be immediately capable of removing millions of visa overstayers.

While the Committee remains gravely concerned about the problem of visa overstayers in this country, it is equally committed to ensuring that rational and cost-effective means are used to pursue this problem. The Committee is cognizant of the complex issues, including the abuse of and inefficiencies in the system itself, raised in considering entry-exit control as a means of going after individual overstayers. A full report is needed on all aspects of automated entry-exit control, including the potential for crime and fraud in the system, before the Committee can properly evaluate the extent to which it makes sense to pursue full automated entry-exit control as a means of identifying visa overstayers or whether it might be

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[13] This is especially a concern given that the INS has been unable since 1992 to produce usable data from its current paper-based entry-exit control system.

[14] If the individual leaving was then accused of overstaying, that person would not only be out of the country, but would likely have ample other proof that he or she had left the United States, such as a used airline ticket and boarding pass or a passport stamp indicating that the individual had entered another country.

[15] As Mayor Archer of Detroit opined at the field hearing, such an entry-exit control database would include millions of names, and there is no indication that it would be feasible to devote the necessary resources to finding those individuals or that there even would be any way to find them.

[16] See, e.g., GAO Report, "INS' Efforts to Identify and Remove Imprisoned Aliens Need To Be Improved" (July 15, 1997).

more effective to pursue visa overstayers through other means, such as aggressive and certain enforcement whenever visa overstayers are encountered by INS.

b. Section 110 has nothing to do with stopping terrorists or drug traffickers

The Committee is keenly aware that implementing an automated entry-exit control system has absolutely nothing to do with countering drug trafficking, with halting the entry of terrorists into the United States, or with any other illegal activity at or near the borders. An automated entry-exit control system will at best provide information only on those who have overstayed their visas. Even if a vast database of millions of visa overstayers could be developed, this database will in no way provide information as to which individuals might be engaging in other unlawful activity. It will accordingly provide no assistance in identifying terrorists, drug traffickers, or other criminals.[17] Information concerning criminal and terrorist aliens can instead only be provided through strong law enforcement, which the Committee vigorously supports. Halting the entry of terrorists or other criminals at border ports of entry occurs through strong border inspections, which the Committee again strongly supports.[18]

c. Current visa overstay enforcement and prosecution efforts should be improved

This is not to lose sight of the significant problem of visa overstayers in the country.[19] The magnitude and importance of the problem, however, should not lead Congress to adopt an ill-advised, harmful, expensive, and easily evaded system in an attempt to address visa overstayers. Notably, the Committee and the Congress understood the importance of this issue during consideration of IIRIRA and included a number of provisions in that legislation to address the very serious problem of visa overstayers.[20] Strong enforcement and strict penalties should be the cornerstone of efforts to attack the visa overstay problem and deter potential overstayers. The Committee has serious concerns that the INS is not currently doing all that it can to identify and remove visa overstayers.

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[17] In fact, terrorists or other criminals seeking to avoid being entered in the automated entry-exit control system could do so with ease by simply leaving the United States before their lawful period of entry, typically 6 months for a tourist or business visa, has expired or by perpetrating fraud on the entry-exit system.

[18] Several terrorists and other criminals have, for example, been caught attempting entry through the Northern border by INS inspections personnel. Those individuals were apprehended under current inspections and enforcement procedures. To continue the success of such efforts and to further improve them, additional inspections and enforcement resources are an absolute necessity. Entry-exit control adds little to efforts to control the border itself because even under entry-exit control individuals are permitted to enter the United States. Their names will only appear in an overstay database six or more months after they have been in the United States if they have not left the country. If individuals pose a threat to the United States, they should be apprehended at a port of entry and prevented from entering—not permitted to enter for prolonged periods.

[19] It is estimated that visa overstayers account for roughly 40 percent of the estimated 5 million illegal immigrants in the United States today.

[20] Section 132 of IIRIRA, for example, authorized 300 additional INS investigators to investigate visa overstayers, and section 301 included severe reentry bars for visa overstayers.

C. COMMITTEE SUBSTITUTE TO S. 1360

The Committee substitute was developed to incorporate suggestions made by the Immigration and Naturalization Service and by several Members. In a letter to the Committee, the INS requested that the legislation be amended in two ways: first, to exempt seaports from coverage of the automated entry-exit control system; and second, to remove the exemption for United States lawful permanent resident aliens. Senators Murkowski and Stevens wrote to the Committee also requesting that seaports be excluded from coverage of section 110.

These changes are included in the Committee substitute. As is the case with land borders, implementation of section 110 at seaports would be an entirely new application of entry-exit control that was not debated or properly considered during debate on IIRIRA. Additionally, these untested controls could cause delays and processing difficulties, impose secondary economic harms on affected industries, and involve potentially costly infrastructure. Although lawful permanent residents are not currently required to fill out paper entry-exit forms when they enter the United States, there are sound reasons to cover them, such as that lawful permanent residents face time limits as to how much time they can spend outside the United States and maintain their lawful permanent resident status.

Reporting requirements were also improved and expanded, particularly to provide specific reporting requirements on data obtained from the automated entry-exit control system and to include reporting requirements on the INS's progress in implementing automated entry-exit control as required at airports.

To accommodate concerns raised by Senator Kyl and others concerning problems being experienced at the Southwest border with the implementation of the new biometric border crossing cards (also called "laser visas") mandated by section 104 of IIRIRA, several provisions related to the new border crossing cards were added to the substitute amendment. First, a fee waiver was included for minors, so that families would not be deterred from visiting and shopping in the United States. Second, to address the lack of production capacity for the new laser visas, which cannot accommodate the demand for replacement cards by the current statutory deadline, the substitute extends by 1 year the deadline after which INS can no longer accept the previous cards. Finally, it ensures that the State Department will keep open throughout the replacement period a number of the temporary application processing locations that it has opened near the Southwest border to take applications for the new biometric border crossing cards.

The Committee substitute amendment includes additional INS resources for border control and enforcement, and a Sense of the Senate that similar additional resources should be authorized for the Customs Service because Customs is cross-designated to enforce immigration laws and plays an important border control role. Additional resources are needed to address the significant border crossing delays already being experienced and to improve enforcement of our immigration laws at the borders. The Committee notes that inspections are particularly key for detecting those attempting

to enter the United States fraudulently or for improper purposes. These resources should be distributed equitably between the Northern and Southern land borders. While resources should generally go where most needed, the Committee is somewhat concerned that in recent years the Northern border has suffered a relative decline in INS and other border control and enforcement personnel.

Conclusion.—These factors as a whole have led the Committee, after careful consideration, to conclude that a number of measures are necessary and appropriate to address and improve conditions at the borders of the United States. It is the Committee's view that S. 1360 embodies a reasoned and balanced approach to facilitating trade, travel, and tourism at the land borders, while at the same time addressing border enforcement needs.

IV. VOTE OF THE COMMITTEE

The Senate Judiciary Committee, with a quorum present, met on Thursday, April 23, 1998, at 10:30 a.m., to mark up S. 1360. At that meeting, S. 1360 was ordered favorably reported, with an amendment in the nature of a substitute, by voice vote, with Senators Ashcroft, Sessions, Feinstein, and Torricelli noted as having voted nay.

V. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides that the legislation may be cited as the "Border Improvement and Immigration Act of 1998."

Section 2. Amendment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996

This section amends Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Section 110 requires the Immigration and Naturalization Service to develop, by September 30, 1998, an automated entry and exit control system to document the entry and departure of "every alien" arriving in and leaving the United States. The problem is that the term "every alien"—broad language that was inserted only in conference and the potential implications of which were not fully appreciated—could be interpreted to cover those entering at land borders or seaports and many aliens entering elsewhere who are currently exempt from filling out immigration forms.

At two Immigration Subcommittee hearings on this topic, extensive testimony was heard from the private sector, local officials in border communities, and the Administration. Testimony indicated that if section 110 was implemented in its current form, intolerable backlogs and delays would develop that would effectively close the land borders and conflicts would arise with current documentary requirements. Implementing exit controls at the land borders and seaports would also require the costly construction of perhaps billions of dollars in additional infrastructure, with at best vague and unspecified benefits.

This section of the legislation accordingly limits the implementation of section 110 to airports and provides that it would cover all aliens entering airports except those residents of foreign contiguous

territories for whom the Attorney General and the Secretary of State have waived documentary requirements. The succeeding section then sets up a reporting requirement, so that Congress will have appropriate information on hand before it decides whether, where, and how any additional automated entry-exit control requirements would be implemented. This approach is supported by the National Governors' Association, the Republican Governors' Association, the Administration, and a broad array of business interests; those organizations particularly reject any delayed implementation requirement on the grounds that the States and businesses should not be subjected to the pressure and uncertainty of not knowing exactly what burdens could be imposed on them in the future.

Section 3. Report on automated entry-exit control system

This section requires the Attorney General, within 2 years after the date of enactment of this Act, to report to the Senate and House Judiciary Committees on the feasibility of developing and implementing an automated entry-exit control system that would track the arrival and departure of every alien entering or leaving the United States, including those entering or departing at land borders or seaports.

The report is to include the following: (1) an assessment of the costs and feasibility of various means of operating such a system; (2) consideration of the various means of developing such a system, including the use of pilot projects if appropriate, and an assessment of which means would be most appropriate in which geographic regions; (3) an evaluation of how such a system could be implemented without increasing border traffic congestion and border crossing delays and, if any such system would increase border delays, an evaluation of the extent to which such congestion or delays would increase; and (4) an estimation of the length of time that would be required for any such system to be developed and implemented.

Section 4. Annual reports on entry-exit control and use of entry-exit control data

To ensure compliance with statutory requirements, this section first provides that within 30 days after the end of each fiscal year and until the Attorney General certifies that the requirement to establish the automated entry-exit control system at airports is being met, the Attorney General must report to Congress on the implementation of the system. The Attorney General must provide an accurate assessment of the state of implementation, a specific timeline for implementation, and detailed estimates of any funding needed.

This section then provides for annual reports to Congress on data collected from the entry-exit control system that would be in operation at airports. Reports would be required to include the following information: (1) the number of arrival records and the number of departure records that were collected through the entry-exit control system, with a separate accounting of those figures by country of nationality; (2) the number of departure records that were successfully matched to records of the alien's prior arrival in the

United States, with a separate accounting of those figures by country of nationality and by classification as immigrant or nonimmigrant; and (3) the number of aliens who arrived as nonimmigrants, or as visitors under the visa waiver program, for whom no matching departure record has been obtained through the system or through other means as of the end of the alien's authorized period of stay, with an accounting by country of nationality and approximate date of arrival in the United States.

This section also provides that information regarding aliens who have remained in the United States beyond their authorized period of stay who are identified through the system shall be integrated into appropriate data bases of the Immigration and Naturalization Service and the Department of State, including those used at ports-of-entry and at consular offices.

Section 5. Limitation on certain border crossing-related visa fees

This section addresses several serious problems that have emerged with the issuance of the new biometric border crossing cards (also called "laser visas") on the Southwest border.

First, to facilitate tourism and trade from families seeking to enter the Southwest States, the bill provides that the $45 fee for the new laser visas may be waived for minors coming to the United States for short-term visits and planning to stay within 25 miles of the border. The visa would be valid only until the minor's 18th birthday, however, at which point the minor would have to pay the fee in order to receive a visa.

In addition, this section would extend by 1 year (until October 1, 2000) the time period that the State Department and INS have to replace all existing border crossing cards with the new biometric laser visas. The current deadline cannot be met. Without at least a 1-year extension, serious difficulties in border management will result on the Southwest border that will harm economies and families in Southwest States.

Finally, because of particular logistical difficulties with the processing of visas over the Arizona border due to the lack of consulates or embassies along that border, this section requires the State Department to continue processing applications through October 1, 2000, at the temporary locations State has opened near the Arizona border to accept laser visa applications.

Section 6. Authorization of appropriations for border control and enforcement activities of the Immigration and Naturalization Service

In order to improve border control and enforcement, this section authorizes a number of specific additional resources for INS. Adding these resources should improve inspections and enforcement at the land borders, which are already overtaxed. Those resources are key both to facilitating legal entry into the United States and to detecting and halting illegal entry.

Section 7. Sense of the Senate concerning authorization of appropriations for border control and enforcement activities of the U.S. Customs Service

Given that the Customs Service is cross-designated to enforce immigration laws and given the important border control role played by the Customs Service, this section provides that it is the Sense of the Senate that authorization for appropriations should be granted to the Customs Service similar to that granted to the Immigration and Naturalization Service under section 6.

VI. COST ESTIMATE

In accordance with paragraph 11(a), rule XXVI, of the Standing Rules of the Senate, the Committee offers the report of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 8, 1998.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1360, the Border Improvement and Immigration Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz and Sunita D'Monte.

Sincerely,

PAUL VAN DE WATER
For June E. O'Neill, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1360—BORDER IMPROVEMENT AND IMMIGRATION ACT OF 1998

As reported by the Senate Committee on the Judiciary on April 23, 1998

Summary

S. 1360 would modify a provision in current law that requires the Immigration and Naturalization Service (INS) to develop a system to document arrivals and departures of all aliens (persons who are not U.S. citizens). The bill would ease this requirement to apply only to aliens who arrive at or depart from United States airports (except those who have obtained a waiver of certain documentary requirements). S. 1360 also would decrease the fees charged to certain visitors from Mexico. Finally, the bill would authorize the appropriation of $114 million for fiscal year 1999, $121 million for fiscal year 2000, and such sums as may be necessary in each fiscal year thereafter for inspection and enforcement activities by INS at land borders.

Assuming the appropriation of the specified and estimated amounts, CBO estimates that implementing S. 1360 would result

in additional discretionary spending of $613 million over the 1999–2003 period. In addition, we estimate that the bill would increase direct spending by $2 million in 1999 and by $1 million in 2000. Because S. 1360 would affect direct spending, pay-as-you-go procedures would apply. This legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and would have no impact on the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government

The estimated budgetary impact of S. 1360 is shown in the following table. The estimated authorization levels for 2001 through 2003 shown in the table reflect continued funding at the authorized level for 2000, with adjustments for anticipated inflation in subsequent years. Under that assumption, estimated changes in outlays subject to appropriation action total $613 million over the 1999–2003 period. Alternatively, if the authorization levels for border control activities are held constant for 2001 through 2003 at the 2000 level—without adjusting for anticipated inflation—the total change in discretionary outlays would be about $590 million over the same period. The costs of this legislation fall within budget functions 150 (international affairs) and 750 (administration of justice).

	By fiscal years, in millions of dollars—					
	1998	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION						
Baseline Spending Under Current Law for INS Salaries and Expenses:						
Estimated Authorization Level [1]	1,660	1,732	1,799	1,866	1,934	2,006
Estimated Outlays	1,553	1,705	1,777	1,844	1,912	1,983
Proposed Changes:						
Estimated Authorization Level [2]	0	114	121	126	130	135
Estimated Outlays	0	95	125	128	130	135
Spending Under S. 1360 for INS Salaries and Expenses:						
Estimated Authorization Level [1]	1,660	1,846	1,920	1,992	2,064	2,141
Estimated Outlays	1,553	1,800	1,902	1,972	2,042	2,118
CHANGES IN DIRECT SPENDING						
Estimated Budget Authority	0	0	0	0	0	0
Estimated Outlays	0	2	1	0	0	0

[1] The 1998 level is the amount appropriated for that year for salaries and expenses for INS. The authorization levels shown for 1999 through 2003 reflect inflation adjustments to the 1998 level.
[2] Without adjustments for inflation, additional outlays would be $95 million in 1999, $125 million in 2000, $124 million in 2001, and $121 million in each of the years 2002 and 2003.

Basis of estimate—Spending subject to appropriation

For the purposes of this estimate, CBO assumes that the specified and estimated authorization levels for the border control programs will be appropriated at the start of each fiscal year, with outlays following the historical spending trends for the authorized activities. The estimates in the table reflect annual adjustments for anticipated inflation after 2000.

Current law requires INS to develop, by September 30, 1998, an automated entry and exit control system to document the movement of every alien who enters or departs the United States. S. 1360 would reduce this mandate to require recording of arrivals and departures of aliens only at airports, except for those residents of foreign contiguous territories for whom the Attorney General

and the Secretary of State have waived documentary requirements. Enacting the bill could result in savings for INS relative to current law. However, since it is unlikely that INS could soon comply with the requirements in current law, we expect that implementing the bill would have little effect on the agency's spending in the next few years.

Direct spending

Under current law, the State Department charges a fee of $45 to visitors who enter the United States; S. 1360 would eliminate this fee for Mexicans under 18 years of age on certain types of short visits. Under current law, the fees affected by this bill are recorded as offsetting collections and are available to the State Department for spending on consular affairs. Assuming an enactment date of October 1, 1998, CBO estimates that the State Department would lose collections of about $16 million a year. The forgone collections would be offset by lower spending; but because spending takes place more slowly, forgone collections would exceed reduced spending by $2 million in 1999 and $1 million in 2000.

Pay-as-you-go considerations

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal years, in millions of dollars—										
	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Changes in outlays	0	2	1	0	0	0	0	0	0	0	0
Changes in receipts	Not applicable										

Intergovernmental and private-sector impact

S. 1360 contains no intergovernmental or private-sector mandates as defined in the UMRA and would have no impact on the budgets of state, local, or tribal governments.

Estimate prepared by: INS Costs: Mark Grabowicz; State Department Costs: Sunita D'Monte.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

VII. REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b)(1), rule XXVI of the Standing Rules of the Senate, it is hereby stated that the Committee finds that the bill will have no additional direct regulatory impact.

VIII. ADDITIONAL VIEWS OF SENATOR LEAHY

I am proud to be an original cosponsor of "The Border Improvement and Immigration Act of 1998," S.1360. This bill will ensure that free trade and tourism continue to flourish along our Nation's borders. Without this legislation, the Immigration and Naturaliza-

tion Service will be obligated to begin implementing an enormously expensive entry-exit monitoring system at all of our Nation's borders this fall without having the opportunity to study the situation and develop a workable monitoring system. Senators Kennedy and Abraham have worked with me to craft legislation which was supported by nearly all the members of the Judiciary Committee and I hope it will pass the Senate promptly.

Since Vermont shares 140 miles of border with Canada, as well as many traditions, I have worked hard to ensure that this legislation does not negatively impact the thousands of people and the trade which crosses our northern border each day. This bill preserves the integrity of our open border with Canada and ensures that no additional burden is placed upon Canadians who plan to shop or travel in the United States. It will also preserve the status quo for places like Norton, VT, which has a General Store straddling the border, with cash registers in each country. Vermonters who cross the border on a daily basis to work or visit with family or friends in Canada should be able to continue to do so without additional border delays.

The Border Improvement Act will guarantee that the $1 billion in daily cross-border trade with Canada is not hindered. It also takes a more thoughtful approach to modifying U.S. immigration policies than that contained in section 110 of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"). The current language in section 110 of the IIRIRA was adopted without input from most of the Democratic conferees and would have a significant negative impact on trade and relations between the United States and Canada. By requiring an automated system for monitoring the entry and exit of "all aliens", section 110 would subject Canadians, and others who are not currently required to show documentation, to unprecedented border checks at U.S. points of entry. This sort of tracking system would be enormously costly to implement along the borders, especially since there is no current infrastructure in place to track the departure of individuals leaving the United States at our land borders or sea ports. Section 110, as currently worded, would also lead to excessive and costly traffic delays for those living and working near the borders. These delays would surely have a negative impact on the $2.4 billion in goods and services shipped annually from Vermont to Canada and would likely reduce the $120 million per year which Canadians spend in Vermont.

Instead of requiring the INS to implement such a costly and burdensome border tracking system with little forethought, S.1360 requires the Attorney General to assess thoroughly the potential cost and impact of any new automated entry-exit monitoring system along the land borders or at the seaports before implementation. An entry-exit monitoring system at our Nation's airports will be implemented within the next 2 years. The Border Improvement Act also authorizes additional funds to ensure that adequate staffing and the newest equipment is available for INS agents along both borders. Before S.1360 was introduced, I co- sponsored an amendment and sent letters to Attorney General Reno and INS Commissioner Meissner with similar language requesting that a study be

undertaken before any sort of automated entry-exit monitoring system be implemented.

I have heard from a number of national organizations—ranging from the National Governor's Association and the U.S. Chamber of Commerce to Ford Motor Company and the American Hotel and Motel Association—which support the changes S.1360 makes to section 110 of IIRIRA. Howard Dean, Governor of Vermont, and numerous other Vermonters have also shared their concerns about the implementation of section 110. In November 1997, Bill Stenger, president of Jay Peak Ski Resort in Jay, VT, testified before the Immigration Subcommittee that the implementation of section 110 would have dire consequences for his ski resort as well as the myriad of other businesses along the border which rely on Canadian visitors. Without these visitors, Mr. Stenger testified that "Jay Peak would go out of business."

In April, the Vermont Senate passed a resolution urging Congress to exempt Canadians from the provisions in section 110. Our extensive shared border and the enormous bilateral trade conducted daily with Canada are strong reasons to keep our Nation's northern border open for trade and tourism. I share their concerns about the potential high costs to implement an entry-exit monitoring system and possible border delays if section 110 is not amended. Perhaps most importantly, I share Vermonters" concerns about the impact section 110 would have on the "many extended families, and close friends, [who] live in communities along both sides of the Vermont-Quebec border and regularly cross back and forth for employment, shopping, recreation and cultural purposes, including visits to the Haskell Free Library and Opera House in Derby Line that literally stands in both nations."

Overall, the Border Improvement and Immigration Act of 1998 is a sensible means of correcting the problematic language in section 110 of the IIRIRA while ensuring that more aliens who overstay their visas are tracked.

IX. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1360, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996

(Public Law 104–208–Sept. 30, 1996)

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TITLE I—IMPROVEMENTS TO BORDER CONTROL, FACILITATION OF LEGAL ENTRY, AND INTERIOR ENFORCEMENT

Subtitle A—Improved Enforcement at the Border

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SEC. 104. IMPROVEMENT IN BORDER CROSSING IDENTIFICATION CARD

(a) IN GENERAL.—Section 101(a)(6) (8 U.S.C. 1101(a)(6)) is amended by adding at the end the following: "Such regulations shall provide that (A) each such document include a biometric identifier (such as the fingerprint or handprint of the alien) that is machine readable and (B) an alien presenting a border crossing identification card is not permitted to cross over the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.".

(b) EFFECTIVE DATES.—

(1) CLAUSE A.—Clause (A) of the sentence added by the amendment made by subsection (a) shall apply to documents issued on or after 18 months after the date of the enactment of this Act.

(2) CLAUSE B.—Clause (B) of such sentence shall apply to cards presented on or after **[**3 years**]** (*4 years*) after the date of the enactment of this Act.

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[SEC. 110. AUTOMATED ENTRY-EXIT CONTROL SYSTEM.

[(a) SYSTEM.—Not later than 2 years after the date of the enactment of this Act, the Attorney General shall develop an automated entry and exit control system that will—

[(1) collect a record of departure for every alien departing the United States and match the records of departure with the record of the alien's arrival in the United States; and

[(2) enable the Attorney General to identify, through on-line searching procedures, lawfully admitted nonimmigrants who remain in the United States beyond the period authorized by the Attorney General.**]**

(a) SYSTEM.—

(1) IN GENERAL.—Subject to paragraph (2), not later than 2 years after the date of enactment of this Act, the Attorney General shall develop an automated entry and exit control system will—

(A) collect a record of departure for every alien departing the United States and match the record of departure with the record of the alien's arrival in the United States; and

(B) enable the Attorney General to identify, through on-line searching procedures, lawfully admitted non-immigrants who remain in the United States beyond the period authorized by the Attorney General.

(2) EXCEPTION.—The system under paragraph (1) shall not collect a record of arrival or departure—

(A) at a land border or seaport of the United States for any alien; or

(B) for any alien for whom the documentary requirements in section 212(a)(7)(B) of the Immigration and Nationality

Act have been waived by the Attorney General and the Secretary of State under section 212(d)(4)(B) of the Immigration and Nationality Act.

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